

***Superseded 5/12/2015***

**31A-37-204 Paid-in capital -- Other capital.**

- (1)
- (a) The commissioner may not issue a certificate of authority to a company described in Subsection (1)(c) unless the company possesses and thereafter maintains unimpaired paid-in capital of:
    - (i) in the case of a pure captive insurance company, not less than \$100,000;
    - (ii) in the case of an association captive insurance company incorporated as a stock insurer, not less than \$400,000;
    - (iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than \$200,000;
    - (iv) in the case of a sponsored captive insurance company, not less than \$500,000; or
    - (v) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured.
  - (b) The paid-in capital required under this Subsection (1) may be in the form of:
    - (i)
      - (A) cash; or
      - (B) cash equivalent; or
    - (ii) an irrevocable letter of credit:
      - (A) issued by:
        - (I) a bank chartered by this state; or
        - (II) a member bank of the Federal Reserve System; and
      - (B) approved by the commissioner.
  - (c) This Subsection (1) applies to:
    - (i) a pure captive insurance company;
    - (ii) a sponsored captive insurance company;
    - (iii) a special purpose captive insurance company;
    - (iv) an association captive insurance company incorporated as a stock insurer; or
    - (v) an industrial insured captive insurance company incorporated as a stock insurer.
- (2)
- (a) The commissioner may, under Section 31A-37-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.
  - (b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:
    - (i) cash; or
    - (ii) an irrevocable letter of credit issued by:
      - (A) a bank chartered by this state; or
      - (B) a member bank of the Federal Reserve System.
- (3)
- (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, shall, through its branch operations, establish and maintain a trust fund:
    - (i) funded by an irrevocable letter of credit or other acceptable asset; and
    - (ii) in the United States for the benefit of:
      - (A) United States policyholders; and
      - (B) United States ceding insurers under:
        - (I) insurance policies issued; or
        - (II) reinsurance contracts issued or assumed.

- (b) The amount of the security required under this Subsection (3) shall be no less than:
    - (i) the capital and surplus required by this chapter; and
    - (ii) the reserves on the insurance policies or reinsurance contracts, including:
      - (A) reserves for losses;
      - (B) allocated loss adjustment expenses;
      - (C) incurred but not reported losses; and
      - (D) unearned premiums with regard to business written through branch operations.
  - (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount as the security posted if the security remains posted with the reinsurer.
- (4)
- (a) A captive insurance company may not pay the following without the prior approval of the commissioner:
    - (i) a dividend out of capital or surplus in excess of the limits under Section 16-10a-640; or
    - (ii) a distribution with respect to capital or surplus in excess of the limits under Section 16-10a-640.
  - (b) The commissioner shall condition approval of an ongoing plan for the payment of dividends or other distributions on the retention, at the time of each payment, of capital or surplus in excess of:
    - (i) amounts specified by the commissioner under Section 31A-37-106; or
    - (ii) determined in accordance with formulas approved by the commissioner under Section 31A-37-106.